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7 *Attorneys for Defendant*

8 BIMBO BAKERIES USA, INC.

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 ALEX ANG and LYNN STREIT, individually )  
14 and on behalf of all others similarly situated, )

15 Plaintiffs, )

16 v. )

17 BIMBO BAKERIES USA, INC., )

18 Defendant. )  
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Case No. 13-CV-1196-HSG (NC)

**DECLARATION OF DAVID W.  
SKAAR IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SPOILIATION SANCTIONS**

Date: August 20, 2015

Time: 2:00 p.m.

Courtroom: 15

Judge: Hon. Haywood S. Gilliam

1 I, David W. Skaar, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and an  
3 associate with the law firm Hogan Lovells US LLP, counsel of record for defendant Bimbo  
4 Bakeries USA, Inc. ("BBUSA") in the above-captioned matter. I submit this declaration in  
5 support of BBUSA's Notice of Motion and Motion for Spoliation Sanctions. I have personal  
6 knowledge of the facts set forth in this declaration and, if called upon to testify, I could and would  
7 competently testify thereto.

8 2. A true and correct copy of excerpts from the Deposition of Alex Ang, dated  
9 February 13, 2015, is attached hereto as **Exhibit A**.

10 3. A true and correct copy of the "Preservation Notice" sent to Plaintiffs' counsel in  
11 this litigation on April 5, 2013 is attached hereto as **Exhibit B**.

12 4. Plaintiffs' counsel never responded to the Preservation Notice that we sent to  
13 them.

14 5. A true and correct copy of BBUSA's First Set of Requests For Production Of  
15 Documents To Plaintiff Alex Ang, dated October 23, 2013, is attached hereto as **Exhibit C**.

16 6. A true and correct copy of Plaintiff Alex Ang's Responses To Defendant's First  
17 Set Of Requests For Production Of Documents, dated December 11, 2013, is attached hereto as  
18 **Exhibit D**.

19 7. A true and correct copy of a meet and confer letter from BBUSA's counsel, Mr.  
20 Matthew Dolan, to Plaintiffs' counsel, Mr. Brad Silverman, dated December 18, 2013, is attached  
21 hereto as **Exhibit E**.

22 8. A true and correct copy of a meet and confer letter from Plaintiffs' counsel, Mr.  
23 Brad Silverman, to BBUSA's counsel, dated December 23, 2013, is attached hereto as **Exhibit F**.

24 9. A true and correct copy of Plaintiff Alex Ang's Second Supplemental Responses  
25 To Defendant's First Set Of Requests For Production Of Documents, dated April 2, 2014, is  
26 attached hereto as **Exhibit G**.

27 10. A true and correct copy of Plaintiff Alex Ang's entire document production, Bates  
28 numbered AA 0001 – AA 0003, is attached hereto as **Exhibit H**.

1           11.     Based on Plaintiff Alex Ang's representation in his Second Supplemental  
2 Responses To Defendant's First Set Of Requests For Production Of Documents that he had  
3 produced all responsive documents in his possession, custody and control, we did not contest the  
4 sufficiency of Ang's document production at that time. At the time, BBUSA was unaware that  
5 Mr. Ang had been destroying his grocery receipts during the course of this litigation and we never  
6 anticipated that such documents would be destroyed.

7           12.     Mr. Ang has not produced any documents since his February 2015 deposition.

8           13.     A true and correct copy of a meet and confer letter from my colleague, Mark  
9 Goodman, to Keith Fleischman and Brad Silverman, dated May 7, 2015, is attached hereto as  
10 **Exhibit I.**

11           14.     A true and correct copy of the meet and confer e-mails between me and Brian  
12 Herrington, dated May 14 to May 21, 2015, is attached hereto as **Exhibit J.**

13           15.     On May 22, 2015, I conferred with Mr. Herrington by telephone in an attempt to  
14 informally resolve this dispute. During that call, Mr. Herrington took the positions that (i) Mr.  
15 Ang's receipts for food purchases made while this litigation is pending are irrelevant and (ii)  
16 BBUSA should have raised this issue when it received the plaintiffs' meet and confer letter in  
17 December 2013. Mr. Herrington further confirmed that his clients would not agree to any  
18 sanction.

19           I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct.

21           Executed this 15th day of June 2015, at Los Angeles, California.

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24   
25 DAVID W. SKAAR